

reconsideration of the application in light of the following remarks are requested.

Originally filed claims 1 through 23 remain pending in this application. Claims 1, 3, 12, 19 and 22 are the independent claims. No claims have been cancelled or added. No claims have been allowed. All of the pending claims, 1 through 23, were rejected with claims 10 and 12-18 being rejected under 35 U.S.C. 112, claims 1 through 23 being rejected under 35 U.S.C. 102 and claims 1 through 11 and 17 being rejected under 35 U.S.C. 103.

**The Rejection of Claims 10 and 12 through 18, Under 35**  
**U.S.C. 112**

One cause for rejection was the phrase "media-born" is unclear to the examiner. The phrase media-borne was intended to mean electronic media based data and programming storage such that the electronic resource could be stored on a central computer, disk device, local computer or other means to allow the processing software and the resource data to be stored and accessible by the user. This appears to be an issue of clarification not substance. Upon review of this response by the examiner, the inventor proposes to interactively agree on acceptable claim language to cover this point.

A second issue raised by the Examiner under U.S.C. 112 is the phrase "may be" in Claim 16 is uncertain. The inventor suggests that the phrase be replaced by "is specifically designed to be". This makes it more clear that the system is intended to be used by non-ergonomic experts.

A third issue is the reference to government regulations in Claims 11 and 17 that have not been implemented and are not in place. This in fact is not true. California and a few other states (governments) have ergonomic regulations that would be satisfied by the proposed ergonomic program. If the issue is clarity regarding "government regulations" regarding software, then the simple correction "government ergonomic regulations" may be made.

The final and major issue by the Examiner under U.S.C. 112 concerns the concept that "useable by laymen" is relatively and basically the same as "easy to use". Clearly, by dictionary definition the terms "easy to use" and "use by laymen" are not at all the same. Easy to use can refer to simplicity in using the system by experts and non-experts in ergonomics. The term laymen specifically refers to providing means to use the system by non-experts. The real point is that the program gathers information

including job hazard analyses (e.g., body positions and work duties) and recommends workplace controls (e.g., suggested repositioning and new workplace activities) that previously have only been available by hiring an ergonomics expert. The high cost of ergonomic experts has been one of the reasons ergonomic programs have been resisted by industry (patent application page 2, lines 10 to 20). The program in this invention is much more than just easy to use. It is useable by a non-ergonomic expert for tasks normally completed by only those with extensive ergonomic training. The inventor believes that the uniqueness of the use by laymen aspect of the claims distinguishes this approach to ergonomics from all others and clearly justifies using the phrase "use by laymen."

In the next section concerning U.S.C. 102, the Examiner improperly references Stern (U.S. Patent No. 6,592,223) as an example of an ergonomics program. In fact, Stern represents one small component of one element of a complete ergonomics program - job hazard analysis and job controls. Stern does not mention or consider the other five elements of a complete and valuable ergonomics program (see for example, inventor application page 3, line 22 to page 4, line 1). The examiner's misinterpretation of the meaning and complexity of an ergonomics program is ample

evidence that he would need more than an easy to use program designed for ergonomics experts. He would need a specially designed program to teach and provide guidance for a non-expert (i.e., a layperson) to assess workers and implement a complete ergonomics program.

#### **The Rejection of Claims 1 through 23 Under 35 U.S.C. 102**

All of these Claims are rejected as being taught or obvious in comparison to the prior art of Stern (U.S. Patent No. 5,592,223).

Stern provides a thorough assessment of distance from a computer monitor, visual acuity and other visual functions related to computer use. There is a component of his patent that might help in improving worker productivity as it may relate to visual functions such as acuity and blinking. The system is usable by laymen, and it records and processes data from a computer and database for the specific purposes defined therein. In fact, Stern does a better job of assessing visual acuity than the current inventor's patent application or the ergonomics field in general.

However, Stern focuses on a single element (visual distance and acuity) of an ergonomics program. Stern does not teach or imply a complete ergonomics program. For

example, a complete ergonomics program has the following elements: management leadership, employee participation, job hazard information and reporting, job hazard analysis and control, training, WMSD management and program evaluation (applicant's patent page 3, line 21 to page 4, line 1). An effective ergonomics program must include all or most of these elements. A complete ergonomics program is not obvious or implied from the teachings of Stern.

In implementing the inventor's program, the job hazard assessment section incorporates over 40 environmental and body position assessments. Specific instructions are provided to make these measurements (normally done by ergonomic experts). Interestingly, in the one example provided in the current patent application of a job hazard analysis (page 17, line 17 to page 18, line 11), the measurement is related to the eyes and vision, but not at all what is considered by Stern. The measurement is the vertical eye position in relation to the vertical position of the monitor. The purpose of this assessment is to determine the upward, neutral or downward tilt of the head. This relates to muscle strain in the neck. Most people do well with an upright or slightly downward tilt of the neck. A large downward tilt or even a small upward tilt will cause strain. Neck strain is as common and probably as

troublesome as eyestrain in terms of ergonomic and medical problems. This concept is not taught, implied or obvious from Stern.

In a similar but even more clear distinction, Stern does not address, hand, arm, shoulder, back, and leg positions in any manner. All of these are included in the inventor's complete ergonomics program. All of these are critical for an ergonomics program. Likewise, all of the non-physiological assessments and components (e.g., management leadership, employee participation, job hazard information and reporting, etc.) are in no way considered by Stern.

Another aspect of Stern is that it is a complex system using at least three sensors, a camera and appropriate interface wiring. It is very unlikely that this system will be "easy to use". It may require some expert set-up and calibration to make it perform accurately. In comparison, the applicant's invention requires no new or sophisticated additions to or measurement tools in the workplace. The only "tool" is a 36 inch ruler. Measurements are made by layperson observations of environmental conditions and comparison with pictorial representations of body positions, all with instructions for one unfamiliar with ergonomics. Again, this is a

totally different approach than Stern and it provides an entirely different set of information.

The inventor requests that the Examiner reconsider all of the rejections under U.S.C. 102 because Stern is clearly a single, focused component of ergonomics that does not teach, imply or make obvious the invention and claims in the current patent application. The approach and the problems solved are completely different between Stern and the applicant invention. As discussed in the next section, the detailed acuity tests provided by Stern are not part of common ergonomic assessments, which makes the teachings of Stern even further removed from the concept of a complete ergonomics program in the present application.

#### **The Rejection of Claims 11 and 17 Under 35 U.S.C. 103**

It is clear from the arguments above that Stern is not attempting to provide a complete ergonomics program of any type; therefore, it would be highly unlikely for Stern, or someone referring to Stern's teachings, to assume the possibility that his system would satisfy government regulations. In fact Stern would be totally in violation of most of the elements of such a program. Additionally, the detailed visual acuity issues raised by Stern are not included in any governmental regulations (in place or